

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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HOLIDAY SYSTEMS INTERNATIONAL
OF NEVADA,

Plaintiff,

v.

VIVARELLI, SCHWARZ, AND
ASSOCIATES, S.A. de. C.V., *et al.*,

Defendants.

Case No. 2:10-cv-00471-MMD-GWF

ORDER

(Defs.' Objection to Discovery Plan and
Scheduling Order and Emergency Motion
to Stay Discovery – dkt. no. 73;
Plf.'s Motion for Leave to File Sur-
Response – dkt. no. 79)

Before the Court is Defendants Resort Solutions, Inc. ("RSI"), Royal Elite Vacation, LLC ("REV"), and Royal Elite Exchanges, LLC's ("REE") Objection to Discovery Plan and Scheduling Order and Emergency Motion to Stay Discovery ("Objection"). (Dkt. no. 73.) Plaintiff Holiday Systems International of Nevada also filed a Motion for Leave to File Sur-Response. (Dkt. no. 79.) The Court grants the latter Motion and affirms the Magistrate Judge's Discovery Plan and Scheduling Order.

I. BACKGROUND

Plaintiff Holiday Systems International of Nevada ("HSI") provides vacation-related business services for vacation ownership resorts and their owners. It has used its name since March 31, 2004, and registered its name as a trademark with the United States Patent and Trademark Office on February 24, 2009.

On or about March 16, 2007, HSI entered into an agreement with Defendant Vivarelli, Schwarz and Associations ("VSA") to market and sell HSI services in Mexico,

1 VSA's principal place of business. On or about February 1, 2008, HSI entered into a
2 second agreement with VSA for the right to market and sell lodging week packages to
3 members of HSI whom VSA had enrolled pursuant to the first agreement. HSI alleges
4 that VSA breached various provisions of the two contracts beginning in January 2008,
5 including but not limited to continuing to market to VSA clients services that compete
6 with HSI, infringing on an HSI mark, and wrongfully appropriating HSI's confidential
7 assets to benefit HSI competitors. HSI alleges that Defendants RSI, REV, and REE
8 were complicit in these various breaches.

9 HSI filed this Complaint on April 5, 2010, against VSA, Aaron Schwarz, RSI, REV,
10 and REE alleging Lanham Act trademark infringement, Lanham Act unfair competition
11 and false designation of origin, breach of contract, breach of the covenant of good faith
12 and fair dealing, misappropriation, interference with contractual relationships, unjust
13 enrichment, conversion, inducement to breach contract, and declaratory judgment.

14 RSI, REV, and REE are Virginia corporations. VSA is a Mexico corporation, and
15 Schwarz is alleged to be a Mexican citizen. RSI, REV, and REE filed a Motion to
16 Dismiss on May 7, 2012, arguing *inter alia* that the suit should be dismissed for lack of
17 personal jurisdiction. (Dkt. no. 56.)

18 On June 27, 2012, Magistrate Judge Foley ordered the parties to submit a
19 proposed discovery plan and scheduling order pursuant to Local Rule 26-1. (Dkt. no.
20 69.) In the joint proposed discovery plan, the Moving Defendants articulated their
21 position that discovery ought not commence until a dispositive ruling on their motion to
22 dismiss, while HSI proposed that discovery begin. (Dkt. no. 71 at 2.) After considering
23 both parties' positions and determining that discovery should not be stayed, Judge Foley
24 entered a scheduling order. (Dkt. no. 72 at 1.) Thereafter, the Moving Defendants filed
25 their Objection and again seeking a stay of discovery until their Motion to Dismiss is
26 decided by the Court. HSI filed its Response on August 13, 2012, (dkt. no. 76), and the

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1 Moving Defendants filed their Reply on August 21, 2012 (dkt. no. 78).¹ As a result, the
 2 Court will construe their Objection as a request to review Judge Foley's decision in light
 3 of the authority vested in Magistrate Judges to decide pretrial discovery matters. See 28
 4 U.S.C. § 636(b)(1)(A).

5 **II. LEGAL STANDARD**

6 The Court reviews a magistrate judge's discovery rulings under the "clearly
 7 erroneous or contrary to law" standard set forth in 28 U.S.C. § 636(b)(1)(A); *see also*
 8 *Anderson v. Equifax Info. Servs. LLC*, No. 05-1741-ST, 2007 WL 2412249 at *1 (D. Or.
 9 Aug. 20, 2007) ("Though Section 636(b)(1)(A) has been interpreted to permit de novo
 10 review of the legal findings of a magistrate judge, magistrate judges are given discretion
 11 on discovery matters and should not be overruled absent a showing of clear abuse of
 12 discretion."). "A finding is 'clearly erroneous' when although there is evidence to support
 13 it, the reviewing court on the entire evidence is left with the definite and firm conviction
 14 that a mistake has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S. 364,
 15 395 (1948).

16 **III. DISCUSSION**

17 RSI, REV, and REE ("the Moving Defendants") request that the Court stay
 18 discovery until their Motion to Dismiss is decided. They justify their request on the
 19 grounds that jurisdictional challenges are exceptions to the traditional rule that motions
 20 to dismiss do not ordinarily warrant a stay of discovery. Since their dismissal motion
 21 challenges the Court's personal jurisdiction over this case, the Moving Defendants argue
 22 that discovery should be stayed pending a dispositive ruling.

23 Applying this standard, the Court holds that Judge Foley did not abuse his
 24 discretion in denying a stay of discovery. "A party seeking a stay of discovery carries the
 25 heavy burden of making a 'strong showing' why discovery should be denied."
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27 ¹HSI also filed a Motion for Leave to File Sur-Response. (Dkt. no. 79.) The Court
 28 grants the Motion, and considered the Sur-Response in preparing this Order.

1 *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975).” Ordinarily, a pending
2 motion to dismiss is not a situation that would mandate a stay of discovery. See *Twin*
3 *City Fire Ins. Co. v. Employers Ins. of Wausau*, 124 F.R.D. 652, 653 (D. Nev. Mar. 8,
4 1989). However, preliminary issues such as jurisdiction, venue, or immunity can justify
5 such a stay. *Id.* In such circumstances, a court *may* stay discovery. See C. A. Wright,
6 Discovery, 35 F.R.D. 39, 60 (1964) (“An obvious application of this principle – salutary if
7 applied sparingly and with real discretion rather than as an absolute rule – is that courts
8 may stay discovery on the merits of an action until challenges to jurisdiction have been
9 resolved.”). Since the decision whether to grant or deny a stay rests firmly in the
10 discretion of the presiding judge, see *Jarvis v. Regan*, 833 F.2d 149, 155 (9th Cir. 1987),
11 this Court will not disturb Magistrate Judge Foley’s considered decision in the absence of
12 an abuse of discretion. The Moving Defendants have not demonstrated such an abuse.

13 **IV. CONCLUSION**

14 Accordingly, IT IS HEREBY ORDERED that Defendants Resort Solutions, Inc.,
15 Royal Elite Vacation, LLC, and Royal Elite Exchanges, LLC’s Objection to Discovery
16 Plan and Scheduling Order and Emergency Motion to Stay Discovery (dkt. no. 73) is
17 DENIED.

18 IT IS FURTHER ORDERED that Plaintiff Holiday Systems International of
19 Nevada’s Motion for Leave to File Sur-Response (dkt. no. 79) is GRANTED.

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21 ENTERED THIS 5th day of September 2012.

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UNITED STATES DISTRICT JUDGE